

Small Business Administration

§ 108.40

MISCELLANEOUS

- 108.1700 Transfer by SBA of its interest in a NMVC Company's Leverage security.
- 108.1710 SBA authority to collect or compromise its claims.
- 108.1720 Characteristics of SBA's guarantee.

Subpart K—NMVC Company's Noncompliance With Terms of Leverage

- 108.1810 Events of default and SBA's remedies for NMVC Company's noncompliance with terms of Debentures.

COMPUTATION OF NMVC COMPANY'S CAPITAL IMPAIRMENT

- 108.1830 NMVC Company's Capital Impairment definition and general requirements.
- 108.1840 Computation of NMVC Company's Capital Impairment Percentage.

Subpart L—Ending Operations as a NMVC Company

- 108.1900 Termination of participation as a NMVC Company.

Subpart M—Miscellaneous

- 108.1910 Non-waiver of SBA's rights or terms of Leverage security.
- 108.1920 NMVC Company's application for exemption from a regulation in this part 108.
- 108.1930 Effect of changes in this part 108 on transactions previously consummated.
- 108.1940 Procedures for designation of additional Low-Income Geographic Areas

Subpart N—Requirements and Procedures for Operational Assistance Grants to NMVC Companies and SSBICs

- 108.2000 Operational Assistance grants to NMVC Companies and SSBICs.
- 108.2001 When and how SSBICs may apply for Operational Assistance grants.
- 108.2002 Eligibility of SSBICs to apply for Operational Assistance grants.
- 108.2003 Grant issuance fee for SSBICs.
- 108.2004 Contents of application submitted by SSBICs.
- 108.2005 Contents of plan submitted by SSBICs.
- 108.2006 Evaluation and selection of SSBICs.
- 108.2007 Grant award to SSBICs.
- 108.2010 Restrictions on use of Operational Assistance grant funds.
- 108.2020 Amount of Operational Assistance grant.
- 108.2030 Matching requirements.
- 108.2040 Reporting and recordkeeping requirements.

AUTHORITY: 15 U.S.C. 689–689q.

SOURCE: 66 FR 28609, May 23, 2001, unless otherwise noted.

Subpart A—Introduction to Part 108

§ 108.10 Description of the New Markets Venture Capital Program.

The New Markets Venture Capital ("NMVC") Program is a developmental venture capital program for the purpose of promoting economic development and the creation of wealth and job opportunities in low-income geographic areas and among individuals living in such areas. SBA selects and then enters into participation agreements with selected newly formed venture capital companies, and provides leverage in the form of debenture guarantees to such companies to allow them to make equity capital investments in smaller enterprises located in low-income geographic areas. SBA also awards grants to such companies and to Specialized Small Business Investment Companies so that they can provide operational assistance to such smaller enterprises in connection with such investments.

§ 108.20 Legal basis and applicability of this part 108.

The regulations in this part implement Part B of Title III of the Small Business Investment Act of 1958, as amended (15 U.S.C. 661 *et seq.*). All NMVC Companies must comply with all applicable SBA regulations, accounting guidelines and valuation guidelines for NMVC Companies, available from SBA.

§ 108.30 Amendments to Act and regulations.

A NMVC Company is subject to all provisions of the Act and parts 108 and 112 of title 13 of the Code of Federal Regulations.

§ 108.40 How to read this part 108.

(a) *Center headings.* All references in this part to SBA forms, and instructions for their preparation, are to the current issue of such forms (available from Investment Division, SBA). Center headings are descriptive and are used for convenience only. They have no regulatory effect.

(b) *Capitalizing defined terms.* Terms defined in §108.50 have initial capitalization in this part 108.

(c) “*You.*” The pronoun “you” as used in this part 108 means a NMVC Company unless otherwise noted.

Subpart B—Definition of Terms Used in This Part 108

§ 108.50 Definition of terms.

The following definitions apply to this part 108:

Act means the Small Business Investment Act of 1958, as amended (15 U.S.C. 661 *et seq.*).

Affiliate or *Affiliates* has the meaning set forth in §121.103 of this chapter.

Applicant means any entity submitting an application to SBA for designation as a NMVC Company under this part.

Articles mean articles of incorporation or charter for a Corporate NMVC Company, the partnership agreement or certificate for a Partnership NMVC Company, and the operating agreement or other organizational documents for a LLC NMVC Company.

Assistance or *Assisted* means Financing of or management services rendered to a Small Business by or through a NMVC Company pursuant to the Act and this part.

Associate of a NMVC Company means any of the following:

(1)(i) An officer, director, employee or agent of a Corporate NMVC Company;

(ii) A Control Person, employee or agent of a Partnership NMVC Company;

(iii) A managing member of a LLC NMVC Company;

(iv) An Investment Adviser/Manager of any NMVC Company, including any Person who contracts with a Control Person of a Partnership NMVC Company to be the Investment Adviser/Manager of such NMVC Company; or

(v) Any Person regularly serving a NMVC Company on retainer in the capacity of attorney at law.

(2) Any Person who owns or controls, or who has entered into an agreement to own or control, directly or indirectly, at least 10 percent of any class of stock of a Corporate NMVC Company or 10 percent of the membership

interests of an LLC NMVC Company, or a limited partner’s interest of at least 10 percent of the partnership capital of a Partnership NMVC Company. However, neither a limited partner in a Partnership NMVC Company nor a non-managing member in an LLC NMVC Company is considered an Associate if such Person is an entity Institutional Investor whose investment in the Partnership, including commitments, represents no more than 33 percent of the capital of the NMVC Company and no more than five percent of such Person’s net worth.

(3) Any officer, director, partner (other than a limited partner), manager, agent, or employee of any Associate described in paragraph (1) or (2) of this definition.

(4) Any Person that directly or indirectly Controls, or is Controlled by, or is under Common Control with, a NMVC Company.

(5) Any Person that directly or indirectly Controls, or is Controlled by, or is under Common Control with, any Person described in paragraphs (1) and (2) of this definition.

(6) Any Close Relative of any Person described in paragraphs (1), (2), (4), and (5) of this definition.

(7) Any Secondary Relative of any Person described in paragraphs (1), (2), (4), and (5) of this definition.

(8) Any concern in which—

(i) Any person described in paragraphs (1) through (6) of this definition is an officer; general partner, or managing member; or

(ii) Any such Person(s) singly or collectively Control or own, directly or indirectly, an equity interest of at least 10 percent (excluding interests that such Person(s) own indirectly through ownership interests in the NMVC Company).

(9) Any concern in which any Person(s) described in paragraph (7) of this definition singly or collectively own (including beneficial ownership) a majority equity interest, or otherwise have Control. As used in this paragraph (9), “collectively” means together with any Person(s) described in paragraphs (1) through (7) of this definition.

(10) For the purposes of this definition, if any Associate relationship described in paragraphs (1) through (7) of